

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

JUL 27 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ULRICH HOLESCHOVSKY and HARRY STEFANOU

Appeal No. 2005-1304
Application No. 10/028,897

ON BRIEF

Before KIMLIN, PAK and KRATZ, Administrative Patent Judges.
KRATZ, Administrative Patent Judge.

REMAND TO THE EXAMINER

This application is remanded to the examiner for supplementing the record with the examiner's position as to the arguments presented by appellants in the Reply Brief of March 07, 2005. The examiner has indicated in a communication dated March 22, 2005 (cover page showing a mail date of March 28, 2005) that the arguments in the reply brief overcome the examiner's § 103(a) rejection of claims 25 and 27-30.

In this regard, the examiner noted in that communication that "Appellants have provided sufficient evidence that one

skilled in the art would not consider the secondary backing of Langsdorf to meet the requirements of being the claimed flexible film."

However, the examiner takes a seemingly inconsistent position in the § 103(a) rejection of claims 15-18 and 20-24 that continues to be maintained over the same prior art as was applied against claims 25 and 27-30. Claims 15, 16 and 25 are reproduced below:

15. A process for producing a tufted good comprising:
(A) treating a flexible film with corona-discharge at a power density of 0.2 to 20 Ws/cm²;
(B) contacting the treated flexible film with an uncured or a partially cured back surface of a precoated greige good, wherein the precoat comprises a reactive polyurethane system; and
(C) curing the article formed in (B).

16. The process of claim 15, wherein the corona-discharge treated flexible film is contacted with an uncured or a partially cured back surface of a foam layer which is adhered to the back surface of a precoated greige good.

25. A process for producing a tufted good comprising:
(A) treating a flexible film with corona-discharge at a power density of 0.2 to 20 Ws/cm²;
(B) contacting the treated flexible film with an uncured or a partially cured back surface of a foam layer adhered to a greige good, wherein the foam layer comprises a reactive polyurethane system; and
(C) curing the article formed in (B).

Concerning this matter, we note that the examiner relies on Langsdorf's teaching concerning a flexible polyolefin film (secondary backing) as set forth at pages 6 and 14 of the answer in the rejection of claims 15-18 and 20-24. Yet, as set forth in the communication dated March 22, 2005 (cover page showing a mail date of March 28, 2005), the examiner now considers the secondary backing of Langsdorf as not meeting the here claimed flexible film.

Moreover, concerning the examiner's comments about the applied Irwin reference not teaching a foam layer located between a greige good and a flexible film in that same communication, we note that rejected claims 16 and 20 appear to include such a foam layer.

In light of the above apparent inconsistencies, the appeal is not ripe for review without additional input from the examiner explaining the seemingly non-compatible positions taken with respect to at least some of the rejected claims and the now allowed claims. In particular, the examiner should issue a Supplemental Answer that addresses the above-noted matter as well as all of the arguments set forth in the reply brief as to any maintained rejection.

REMANDED

PFK/sld